

# TRANSGENDER COMMUNITY ACTIVITIES AND THEIR MARRIAGE CONCEPT IN YOGYAKARTA

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## Abstract

*Transgender have been considered as someone who always marginalized in their life, so they always get moral discrimination, social and even religion. Development of the transgender community in Yogyakarta is currently getting a response from various groups, namely the general public, religious leaders, sociologists and psychologists. As for job transsexual Kebaya NGOs joined in Yogyakarta, located in very small scope, include: ngamen, nyebong, salon and sewing. It was done since the transvestites are out of work in the formal sector. The concept of marriage in transgender community in Kebaya NGOs does not have clear rules because there is no basis or guidelines. Same-sex marriage in Indonesia is not recognized legally as well as normative, so the concept of transsexual marriage does not exist according to Islamic law. Kebaya NGOs consider that the rules about marriage in Indonesia violate the human rights, because it does not facilitate and accommodate the same-sex marriage.*

[Waria selama ini dianggap sebagai sosok yang selalu termarginalkan di dalam kehidupannya, sehingga mereka selalu mendapatkan diskriminasi baik moral, sosial, maupun agama. Perkembangan komunitas waria di Yogyakarta saat ini mendapat respon dari berbagai kalangan, yaitu masyarakat umum, tokoh Agama, Sosiolog, dan Psikolog. Adapun pekerjaan Waria Yogyakarta yang tergabung dalam LSM Kebaya, berada dalam skala yang sangat kecil meliputi : Ngamen, Nyebong, salon dan menjahit. Hal itu dikerjakan semenjak waria tidak mendapat pekerjaan dalam sektor formal. Konsep perkawinan dalam komunitas waria di LSM Kebaya belum mempunyai aturan yang jelas karena tidak ada landasan atau pedomannya. Perkawinan sesama jenis di Indonesia tidak mendapatkan pengakuan secara yuridis maupun normatif, sehingga konsep perkawinan waria tidak eksis menurut Hukum Islam. LSM Kebaya menganggap bahwa peraturan tentang perkawinan di Indonesia melanggar hak asasi manusia, karena tidak memfasilitasi perkawinan sesama jenis.]

**Kata Kunci:** Waria, konsep perkawinan, hukum Islam, LSM Kebaya

## A. Introduction

Sexual inequality is growing up day by day. The existence of Transgender community is growing up, this fact becomes evidence that sexual inequality is growing. Especially now, in Yogyakarta, the city which is so complex with unique culture highly visible from its municipal or city buildings, the Transgender community was so exist with their selves, without they were thinking of the community in their surround. This case seems the various union organizations that are patently clear in

passes by one of its agencies with the role of nongovernmental organization or LSM. So that, the sexual inequality is the very visible Transgender community in Yogyakarta which is intentionally mating or doing marriage with each other species, although this is not legally at all by the recognition from the government.

So, in this case is not recognized by the employee of marriage register (PPN) by the religion affairs office in certain area. So, in fact the Transsexual or Transgender in Yogyakarta are getting social inequality. Then the sufficient social

inequality at least the Transgender are so visible marginalized from the social community at large. This result because of the Transsexual or Transgender is a minority. So, the marriage are performed according to the existing class of Transgender in Yogyakarta, which is not a marriage according to the marriage definition which is defined according to the people on general based on KHI/ Islamic Law/ Shari'ah.

More specifically, Islam is a religion that respects the life of a biological instinct (sex), which is an important part of life. Already became a *sunnatullah*, that Islam is capable of handling all of that in a balanced, interesting and objective, as long as people still thinking that marriage is an important element in this life. Islamic Shari'ah prescribed invites couples always to try to find goodness, strength and struggle of their partners in a relation called *marriaging* " in addition to merely pleasure in intercourse (**having sex**).<sup>1</sup>

According to Law No. 1 of 1974, the essential meaning of marriage is to tie between a man with one woman as husband and wife with the aim of forming a family (household), a happy and everlasting based on Belief in God the Almighty. Marriage is considered valid if performed according to the law of marriage each religion and belief, and recorded by the competent authorities according to legislation which is one form of worship that sanctity should be maintained by both husband and wife. Marriage aims to establish a prosperous and happy family forever not as just a moment. Marriage requires maturity and physical and mental preparation for *marriaging*. Marriage is something sacred and could determine a person's life path.<sup>2</sup> Marriage in every human's

life is something that is considered sacred. Where the marriage became legal ties to bind the relationship between two beings of different sexes (husband and wife) Because, in this way is expected to the regeneration of human on this earth will be continue and sustainable. Not marriage as according to the Transgender.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَعْقِلُونَ<sup>3</sup>

This is consistent with the purpose of marriage is a legal offspring obtained. The other purpose of marriage which is the rights and obligations of husband and wife as together is the fulfillment of a biological or sex and it was suitable to the purpose of marriage according to *ushul fiqh*:

درء المفاسد مقدم على جلب المصالح<sup>4</sup>

Sexual life that is clean, pure, lawful would be achieved and included in the category of worship, Islam has conceptualized for a Muslim who has been enable birthly and spiritually for immediately entered into marriage.<sup>5</sup> The marriage is seen as a bond that can neutralize the human sexual drive (support), so it will become a blessing countless value. In Islam also views that marriage became way to overcome sexual problems. Marriage is also a vehicle to avoid problems of sexual deviant. Problems in marriage arranged in the Law which regulates such a marriage Law No. 1 of 74 including the KHI (Islamic Law) and BW (Burgerlijk Wetboek). When they said candidate of husband, it will automatically appear the assumption that he was male. Likewise, if said candidate's wife, then the assumption that she will appear. Here is the

<sup>1</sup> Sudarsono, *Pokok-pokok Hukum Islam*; MKDU, cet. ke-1 (Jakarta: Rineka Cipta, 1992) p. 15-16

<sup>2</sup> Al-Munawwir ; *Dictionary of Arab-Indonesia*, cet. ke-14, (Surabaya : Pustaka Progressif, 1997), p. 1461. But then, at nowadays there has any differences between the essence of *Having Sex* and *doing marriaging*, but actually the real essence of the meaning of *having sex* and *doing marriaging* is in the same point, just depends on our sense/ interpretation.

<sup>3</sup> Q.S. Ar- Rum (30): 21.

<sup>4</sup> Asjmun A. Rahman, *Qaidah-qaidah Fiqh (Qowa'idul Fiqhiyyah)* (Jakarta: Bulan Bintang, 1976) p.83

<sup>5</sup> Soemiyati, *Hukum Perkawinan Islam dan Undang-undang Perkawinan (Law No. 1 year of 1974, about marriaging)*, cet. ke-4 (Yogyakarta: Liberty, 1999), p. 12- 15.

beginning of explanation later ones I will try in this writing. In this case, then how do the position of that in fact a transgender male but psychologically she is a woman, or the opposite one which is in the fact is a transsexual woman but psychologically he's a man. In fact, the reality on Field revealed the existence of "marriages" that occurred between them.<sup>6</sup>

Transsexuals is stigmatized in many parts of the world but has become more widely known in Western culture in the mid to late 20th century, concurrently with the sexual revolution and the development reassignment surgery (SRS) of sex Discrimination and negative attitudes towards transsexuals often accompany certain religious beliefs or cultural values. There are cultures that have no difficulty integrating people who change gender roles, often holding them with high regard, such as the traditional role for 'two-spirit' people found among certain Native American tribes. As Merlyn Sopjan sayings, the Queen Transvestite of Indonesia, that life is not an option but a transgendered is like bad fate. According to him, humans are like puppets and God as the mastermind. So all things related to the puppets that have been conceptualized and directed by God and man in such a way as creatures only live through it. In Similarly, the destiny of the existence of transgender as well as the grace of God that ought to be grateful. However, if its tendency unknown, then the applicable laws that the benefit one. Trans-gender identity is different from, though related to, sexual orientation. Sexual orientations among transgender people vary just as much as they do among cisgender people. Although few studies have been done, transgender groups almost always report that their members are more likely to be attracted to those with the same gender identity, compared to the population as a whole : that is trans-women are more likely to be attracted to other women, and trans-men are more likely to be

attracted to other men. Many transgender people who are attracted to others of the same gender will identify as gay, lesbian, or bisexual.

Talking about transgender, nowadays are growing up time to time. This cannot be released with sexual orientation conducted. When seen physically, it was as if transgender are gay, because he is interested in its kind. Especially, now in Yogyakarta we see the fact that even Transsexual are being marginalized, but the existence is still growing up until right now. The communities of Transsexual are very attractive to get research of their lifestyle. And now, that to be the question is how sociological view of Islamic Law accommodates the developing case of Transsexual. However, when viewed psychologically, The Transsexual are heterosexual, opposite sex are attracted to men, although the physical condition of men. Then, with the condition that "all wrong" so, how to implement meant that how sociological view of Islamic Law regards this case to be the right solution. Even people are Transsexual but actually they were same like us, that they need protection in their life to strengthen their existence. Even most of them (*Transgender*) also can be influenced by the economic conditions that occurred in Yogyakarta, which are on average lower educational backgrounds among them (*transgender*) are not even complete primary school. The transgender must have the same right of life, both in Education case and also get freedom in every life aspect like others.

## B. The Activities of Transgender Community Yogyakarta

Yogyakarta Transgender Community is very attractive to be researched, so the author realizes that there are actually a gender other than male and female. Transvestite is not a gender. However, the third gender transsexual whose existence is recognized but alienated by a state or condition. It needs a tolerance that is

<sup>6</sup> From Wikipedia, the free encyclopedia (*Redirected from WWW. [Transsexual](http://www.transsexual.com). Com*) at 01 pm 21<sup>st</sup> of may 2011.

created by society when addressing minority. Because of the existence of minorities will remain in the midst of the majority society. Being a transgender is a life choice it was not a choice that must be accepted. Although the choice of being a transgender has some risks and challenges, but they are still in confidence and faced this conditions as transgender in itself. Certainly being transgender has become the choice for the transgender to choose their own gender identity as a transgender that they have chosen. So, the choice should be accepted by society because with the acceptance of society will affect how people view themselves against transgender. So, properly the existence of true transgender has been recognized by the community.

In fact, that there is essentially a phenomenon that involves a very tragic life of transgender in the environment of existing communities, where it is still found many forms of violence, discrimination is still often obtained by a transgender in Yogyakarta. Interaction between the community and transgender had enough process. But how to responds and accept transgender as part of a pluralistic society. So, the writer sees a variety of professions conducted by the transgender in general. Professions that are conducted by the transgender are very small in scope such as: *ngamen*, *nyebong*, *salon*, and *sewing*. Transgender job done since most of transgender do not get formal employment or non-formal sector. The Problem that the writer met in this study correlated with the opportunity of a very small result of transgender in difficult to meet all their daily life. Life is same with among others, to rent a place to stay, eat, drink, having transportation to work and there is also a fund family such as children and husband or *lekongan* (brother). This is where the writer can see the reality of the lives of transgender in everyday from the way they dressed, communicating with friends' transgender itself, and even household

care profession or work of transgender that they did. As writer of this Research we work directly in this study as an indirect participant to Transgender in Yogyakarta.

The writer often encountered when there are some spaciousness plunges upon transgender who get violent physical or sexual violence. Basically, the Transgender need to uncover what is happening in the field concerning the treatment of people who often make the transgender into the lowest class. Transgender status is considered the lowest status. These assumptions result of transgender like not having dignity and status, where as all humans have the same dignity and same rights. This is the proof of the injustice of people who think of transgender as the strange, disgusted and accusatory nature. But the cases are often encountered in the author of transgender are often violent physical or sexual violence or verbal came from men. Needs be, there is an understanding of the attitudes of tolerance and mutual respect in order of transgender can live like other human beings in general and they are not marginalized by the state, For example: sometimes they (*transgender*) still have any difficulties in getting a job because their gender identity was not clear at all. So, we managed to find the meaning of the vocabulary or language of transgender as a means to convey information between these transgender. In the interaction between the transgender communities they have languages that can only be understood by its communities of transgender or the other. These languages used to clarify more in performing their existence as their transgender existence itself. The writer also managed to identify some of the vocabulary words in the transgender community, among others.<sup>7</sup>

### C. Discrimination Aspect in Political Participation to Yogyakarta Transgender

The activities that can be categorized as showing various forms of political participation

<sup>7</sup> Interview with a Transgender Yogyakarta, Yuni Shara "Analisis Bahasa Waria dalam percakapan waria sehari-hari," Minggu, 25 Desember 2011.

and intensity. It usually held distinction of participation according to the frequency and intensity. People who follow the activities are not intensive, that is the activities that do not take up a lot of time and are usually not based on their own initiatives (such as voting in elections) a huge amount. Conversely, very small number of people who are active and full-time involved in politics. Activities as it covers political activists, among others, became the leader of the party or interest group. Political participation of transgender in Yogyakarta as a Special Region can be seen based on their perspectives on political participation. As correspondent named Mami Vinolia Wakijo the Leader of LSM Kebaya, Yogyakarta said his participation in politics:

From the narrative of Mami Vinolia of political participation is seen that the form of political participation in the form of choosing a political party when he was on the register as voters. Based on the theory proposed by Milbrath and Goel, dividing theories into three parts, namely: (1) Players (Gladiators); (2) Attendance (Spectators); and (3) Apathy (Apathetics). In participation attitude shown by *Mami Vinolia Wakijo* can be classified into the form of participation as a spectator or (Spectators). It because of Mami Vinolia will provide flare when he recorded in the General Election.<sup>8</sup>

From the opinion of Michael Rush on the characteristics of apathy can be encountered on the transvestite corresponding data that already pointed out above regarding the political participation of transgender themselves.

Regarding this situation, Rosenberg (in Sudijono Sastroatmodjo, 1995:75) cites three reasons for the existence of political participation, namely:<sup>9</sup> (1) That the individual considers that political activity is a threat to some aspect of life, they assume that the following political activities can damage social relations; (2) Individuals considered political activity is an activity that

vain the individuals. Thought that he would not be possible to change the state and political control. In his view, it occurs in the gap between ideals and reality that no one who can bridge it; and (3) A lack of political competition. This was based on the premise that politics is just give a little satisfaction and indirect, while the direct result which accepted very little. In other words that political participation is not feasible for him to meet the daily needs.

From the above Rosenberg opinion about the reasons someone is apathetic in political participation can be encountered on the political participation of transgender themselves, about the political participation of transgender who are apathetic.

Frank Lindenfeld fined the main factors that encourage people to participate in political life is financial satisfaction. In addition Lindenfeld also found that low economic status cause one to feel eliminated from political life. And people in question about politics will become apathetic. This is not going to happen in people who have good economy condition.

As the theories put forward by Lindenfeld about the low economic status cause one to feel eliminated from political life. Frank Lindenfeld statement is in accordance with what was found by researchers in the field. The majority of transgender has led to low economic status of transgender eliminated of political life. So that the transgender are apathetic in political life. This situation is influenced by the status attached to transgender identity as well as low economic status that led to the view that their involvement transgender (transgender-red) in politics cannot bring benefits to life itself. The reason why this became one of transgender are apathetic towards political participation.

In addition apathetic attitude (apathy) and spectators (audience) about the political participation of transgender. If related to the

<sup>8</sup> Interview with *Mami Vinolia Wakidjo*, as *Transgender Representative in LSM Kebaya, Yogyakarta*, 25<sup>th</sup> of December 2011 at 15.00 pm.

<sup>9</sup> See detail in *Sudijono Sastroatmodjo*, 1975 at p. 75

theory of political participation typology proposed by Ramlan Surbakti (1992, 142-143) namely:<sup>10</sup>

*"Partisipasi sebagai kegiatan dibedakan menjadi partisipasi aktif dan partisipasi pasif, yang termasuk partisipasi aktif ialah mengajukan usul mengenai suatu kebijakan umum, mengajukan alternatif kebijakan umum yang berlainan dengan kebijakan yang dibuat pemerintah, membayar pajak dan memilih pemilih pemerintah. Sebaliknya, kegiatan yang termasuk dalam kategori partisipasi pasif berupa kegiatan yang menaati pemerintah, menerima, dan melaksanakan saja setiap keputusan pemerintah."*

From the theories put forward by Ramlan Surbakti can be concluded about the political participation of transgender are passive means of transgender only engage in activities oriented to the process output. Because, of transgender can only comply with government regulations and accept all that the government decide on policies. In general, the drag queen look with the active political participation has not been able to bring a change for him and a group of transgender themselves. This makes the passivity of transgender are based on the attitude to accept any policy that the government spend. If there is a group of transgender performs a demonstration to oppose all government policies are not entirely the initiative of the transgender themselves but there is a mobilization of NGOs that accommodate or transgender community mobilization for demonstrations against government policies.

#### **D. The Discrimination Factors in Political Aspect to Transgender Yogyakarta**

##### **a. Status Sex or Gender Status**

The Status of sex or gender that to be one obstacle for the transgender to plunge or to participate in political participation. The drag

queen or transgender were always getting into trouble when dealing with identity inherent in him. They felt his status as a transsexual is the bottleneck of transgender to get right in politics. Society at large still considered transgender are people who do deviations in social life. Self-acceptance of transgender as a third gender still difficult to accept.

##### **b. Education and Employment**

This factors is become the main factor to Yogyakarta Transgender in political aspect. The researcher found some data about the recent education of transgender and job or profession of transgender who are in their respective areas in accordance with the community or place of residence of transgender Yogyakarta.

#### **E. The factors That affect Someone Become Transgender**

According to scientists and strengthen by the interviewed result from the field, there are several factors that cause a person could be a Transgender; among them are:

##### **1. Biological Factor**

The Scientists from Netherlands has found preliminary evidence that transgender have different brain structures with men in general, at least one key area of approximately 1-8 inches wide. They examined a section of hypothalamus called the Central Division of the Basal Nucleus of the Stream terminals (BSTC). This area, which is expected to increase sexual behavior, an average of 44% are greater in men than in women. Scientists from the Netherlands Brain Research Institute reported early evidence that transgender have different properties. The study shows the existence of transgender tiny structures in which there is on one part of the brain. This section controls sexual function and type more like the type found in women than in men. BSTc on Transgender more like a BSTc in

<sup>10</sup> In his book, Ramlan Surbakti, *In clarifying about politics*; 1992, p.142-143

women. But in fact, the average of BSTc on transgender smaller than the BSTc in men women. The researchers found that at least there is a biological motif which caused the Transgender wants to replace the tool of their sexes genital, although perhaps this is not the only reason. Swabb an expert *stating that*; the research that he has done indicates that the structure of other structures in the brain could be seen.

Based on the results of this study, can be concluded that gender identity is developed in the interaction between brain development and the sexual hormones.<sup>11</sup> These findings support the hypothesis that gender identity development is the interaction between sex hormones and brain development. But this does not mean that the process of learning from culture or the environment does not affect. According to Witelson (In Kusuma, colleagues, 2001) this study only to explain the relationship between anatomy and behavior.

Biological factors which could also be factors that cause someone to be transgender is due to chromosome abnormalities sexual. Research on this, mentioning that the presence of an unbalanced chromosome also affects the existence of transgender. If a baby is usually born with XX chromosomes is balanced, and YY, then the self transgender unbalanced chromosome, that is XXY or XXYY, or XXXYY. This gives rise to the birth of a male with feminine characteristics are more inherent or otherwise. The researchers suspect that the cause of this disorder because no separation of the sex chromosomes during meiosis of the first and second. This is because the age of a mother that affect the reproductive process, namely the older of the mother, the more it will not either the egg cell division process and as the result, the greater the possibility of causing sexual abnormalities in children.<sup>12</sup>

## 2. The Environmental Factors / Environmental Effects

Freud (in Esty and Sugoto, 1998) says that most of the causes someone to be transgender is to outside influences or after birth. Family environment, especially the father and mother is a person who became an important figure identification. In the sexual development of its then a child will identify the character of the father and mother. Ingredients in this case the role of parents, especially fathers and mothers have a very important role, in terms of what he taught to his future children will imitate, because parents are an important figure for a child. So that children of parents in its development must perform control psychology that is right for their children, to the establishment of proper personal and optimal. (Davidson and Neale, 1978).

In some theories of Psychology mentioned that, the tendency of people to be transgender one of which is caused by *Heterophobia*, namely the fear of doing the sexual relationship due to the other sex which is wrong because of the sexual experience.<sup>13</sup> The environmental effects felt horrible when a transgender still be a child because the intern factor of family.<sup>14</sup>

## 3. The Wrong Way of Educating

Stoller (in Esthy and Sugoto, 1998), says that one becomes a transgender because mother is too dominant a role in self-brother boy, father attitude than being passive. The birth of a beautiful child, "like a baby girl is being a mother is very excited to form a close emotional bond with her child, and this usually lasts for many years. In addition, the desire of hidden wants of parents to have children in the opposite sex, resulting in how to educate children who absolutely misunderstood or even wrong and this is caused one of the factors creating the

<sup>11</sup> Interviewed result with Vinolia Wakidjo, on 13<sup>th</sup> of December 2011 at 15.00 in LSM Kebaya, Yogyakarta.

<sup>12</sup> Taken from; <http://www.victimology.2000.com>, Accessed on 2<sup>nd</sup> of January 2012.

<sup>13</sup> Koeswiwarno in his book "*Heterophobia*" year of 1996.

<sup>14</sup> Interviewed Result with Cha- Cha, as a transgender where he settled at Bimo Suko Street, behind the Saphir Hotel, Yogyakarta at Thursday 15<sup>th</sup> of December 2011 at 14.00.

personality of a transgender, starting from her childhood.<sup>15</sup> Hope that buried deep in the birth of a child with a particular gender can lead to educate the wrong way. A mother who is expecting the birth of a daughter and had prepared all the baby furniture related to the properties characteristic of a woman will feel frustrated to learn that her baby birth is a male. So in further developments, boys are trained to apply with the nature as a mother nature and her desire, for example by performing various actions are usually doing by girls. So the impact is going to cause properties characteristic of women who settled on the boys (boy baby) themselves, and eventually these boys will have properties that tend to be girls properties and lastly tend to be a transgender. Therefore the best thing that should be done by parents is to educate the child should state, if the child is male then it should be treated like boys. Actually also with the girls. This is done in order to avoid psychological stress for children whose impact is the physical form or tend to be a transgender.<sup>16</sup>

#### 4. The Learning Process

Every Man in life always through the typical stages of development stages. In each stage of development, the human has an experience and learning process. In each stage of development, humans undergo a process called learning. The learning process is quite influential in the development of lifelong learning is at the time was a little boy. This occurs because of an identification figure. Identification of these figures into things that play an important role in the development of existing, including the development of sexual. Based on this statement, it can be exemplified that a boy must identify himself to a father figure, while girls have to identify as figure of a mother. As if there was an opposite, it can be chaos.<sup>17</sup> besides this, the presence of

reward or praise for the deviant behavior of children became a contributor to the emergence of transgender behavior.

The Conditions which experienced by a transvestite can be said to have the same orientation to group of Gay. Especially in his sexual orientation, is pleased with Homosexuals, male-oriented (with similar). A study conducted by Margolese, 1970 (in Nadia, 2005) showed that the presence of different comparisons between metabolites (metabolic products), especially catabolism which is found only in men. Anethiocholance (andrenocaltical metabolites) that are only found in male urine is very different among homosexual men with heterosexual people. Brodie, Gratell, Doening And Rhoe (1997) says that testosterone is higher in homosexuals compared to heterosexuals. This also by studies supported by Doer, Kockot, Vogt, Pirke and Dittmar (in Kartono 1989), which indicates that there are higher levels of "*plasma oestradiol*" namely sexual hormone boosting expenditure on gay people.

Meanwhile, from a medical perspective, the transgender there are probably caused by hormonal imbalance, hormonal factors, endocrine factor, congenital factors and some of them because of the biological basis in the parental, so it can grow deviant behavior. endocrin liquids and fluids at the critical growth, such as the onset of puberty is also able to provide direction to boost sex drive and sexual behavior in humans.<sup>18</sup>

Hormonal developments also greatly influenced by the psychological condition of a person, someone who is experiencing psychological deviations in the development, the development of hormonal experienced also not normal. A boy who is treated as a little girl since it will experiencing hormonal development is not balanced it is probable, at the time of the day will be absolute feminine.<sup>19</sup>

<sup>15</sup> *Ibid*, p.55.

<sup>16</sup> *Ibid*, p.57.

<sup>17</sup> Esty and Sugoto, in their book; *The Children Psycology*" year of 1998.

<sup>18</sup> Koeswiwarno," *Perilaku Menyimpang Seksual*", year 1996, p. 85.

<sup>19</sup> *Ibid*, p.87.



## F. The marriage concept according to Transgender Yogyakarta

The marriage concept according to Transgender Yogyakarta is interested to be discussed, even it is not legally perform by the Transgender Yogyakarta. This thing is absolutely contrary with the essential meaning of Law No. 1 of 1974, that the essential meaning of marriage is to tie between a man with one woman as husband and wife with the aim of forming a family (household), a happy and everlasting based on Belief in God the Almighty. Marriage is considered valid if performed according to the law of marriage each religion and belief, and recorded by the competent authorities according to legislation which is one form of worship that sanctity should be maintained by both husband and wife. Marriage aims to establish a prosperous and happy family forever not as just a moment. Marriage requires maturity and physical and mental preparation for marriage. Marriage is something sacred and could determine a person's life path.<sup>20</sup> Marriage in every human's life is something that is considered sacred. Where the marriage became legal ties to bind the relationship between two beings of different sexes (husband and wife) Because, in this way is expected to the regeneration of human on this earth will be continue and sustainable, not marriage done by the same sex between same men (*homosexual*).

When talking about the context of marriage which is done legally, in case of divorce the property generated during the marriage (property "Gono - gini" ) Should be in two fairly even this case accordingly to the agreement of both husband and wife.

Actually this concept not conducted by the transgender, the marriage concept according to Transgender Yogyakarta is absolutely different, the transgender mostly chose not to fuss over such property as a bond because they absolutely

realize which is not have the force of law legally because it was done by the same sex between man and man. This marriage action by the Transgender Yogyakarta not recognized by the Government. Intrinsically that a transgender understand that the concept of marriage is done is according to their own understanding in order to get the recognition himself in fighting for their own existence fellow of transgender in Yogyakarta. Personally the transgender/transvestites actually understand the meaning, the existence of widespread understanding of marriage is. So they also understand that the assumption of marriage that they do not at all get the recognition in law or in religion, especially Islam. In social life the transgender have a problem internally, in terms of assets or property then the transgender will be giving it to his transgender spouse "*(lekongnya)*". vice versa, if the transgender needs it, so transgender as his couple as his partner will also submit it, or who stay in a rented house they had rented during the engagement then he is entitled to such property as is the case in Emy, a transvestite of Yogyakarta.

Based on field data that I get in the field with the results of interviews with Mami Vinolia Wakidjo, as LSM Kebaya activist, this LSM accommodates transgender with the current number of 32 people where they are HIV positive / ODHA. Whereas The LSM Kebaya handled by a certain number of ODHA in the process of healing Therapy which numbered are 5 people. So that the 5 people are living in LSM Kebaya, Yogyakarta. Actually talking about the concept of marriage according to Mami Vinolia Wakidjo as transgender activist in LSM Kebaya representing the transgender in Yogyakarta explained that they did not see transgender marriage was never there, because in Indonesia is not never known the concept of marriage as same types or kind (same man). So in the case of

<sup>20</sup> Al-Munawwir ; *The Dictionary of Arab-Indonesia*, cet. ke-14, (Surabaya : Pustaka Progressif, 1997), p. 1461. But then, at nowadays there has any differences between the essence of *Having Sex* and *doing marrying*, but actually the real essence of the meaning of *having sex* and *doing marrying* is in the same point, just depends on our sense/ interpretation.

transgender marriage is not regarded as being important, but the important thing is how transgender can survive with all the limitations that they have until this time.

### G. Analysis concerning with the Transgender case in Yogyakarta

Ultimately, Allah SWT (The Almighty) has created Prophet Adam and Eve as the human embryo of survival. As in long term of its process of continuity as the growing of human were increasingly grow up resulting from the occurrence of sexual intercourse between men and women where it was represented in the marriage relationship. The marriage relationship is generally done by the husband and wife who both emphasized the aspects of love each other. The command of this marriage order, As Allah SWT has commanded in the holy book like in Al-Quran Surah An-Nisa verse 1, al-Hujjarat verse 13, as-Shura verse 49-50, and also in Surat an-Najm verse 45, and so forth.

Transgender, according to the definition of Indonesian Dictionary (1999) means : the woman men, men who behave like women, even if they have a tendency of feeling psychologically as a woman. Meanwhile, in the Arabic language is often interpreted as a transsexual / called as Khunsa (derived from the word : Khanitsa-Khanatsan). Generally there has some factors which caused anyone become Transgender like has described above, namely: (1) The Biological factor; (2)The Environmental Factor; (3) The Factor of wrong educating; and (4) Learning factor;

So, with the explanation above it was enough to give us an understanding that ultimately as physical reality a transgender is absolutely male and not even considered by law application as women, this cases are included in the determination of their rights and obligation in general. Responding to the development of the growing cases of transsexuals in Yogyakarta, here I try to give clear understanding related to

transgender case which sometimes felt to be pomegranate in determining what are the appropriate action that correctly done by our fellow friends as transgender. So far, transgender regards as the only one figure which regarded as the disgusting thing that always be identified with the poor (be marginalized). Whatever the reason that we absolutely wrong in the term of discriminating transgender, even they are the minority group. This action was not suitable with our ideological purpose of *pancasila* whether in other side as good Indonesian people we must keep care to the formation of Human Rights existence in Indonesia. Violence cases, and marginalization and sometimes sexual abuse-ment has become a common phenomenon that experienced by a transgender person, as we have found in the field that transgender discrimination and marginalization is still constantly evolving without regard the humanistic aspects as social beings.

Although Islam as a progressive religious, appropriately should provide the freedom space for transgender at least they are also seen as a perfect creature of Allah SWT ( The Almighty) who also deserve to get moral dignity and values. As a wise person, we must respect to transgender identity and they are not fully seen addressed in the text ( *Nash*) where they are always put on any kinds of discrimination. Transgender at least get a self protection in accordance the protection which referred to Islam itself as commonly known as Self Preservation. (As *The Preservation of nafs or life / المحفظة علي النفس* ).

The concept of marriage according to the transgender in Yogyakarta is one form of representation in order to obtain their existence as a transgender in social life. So that, the understanding of Marriage Concept by transgender is only defined as a pledge in positioning their self as Transgender, So one acts to be men and women. This marriage concept practiced by Transgender Yogyakarta without having the completely Pillars of marriage requirements (*sebagai rukun dan syarat dalam perkawinan*) as

what have been intended by Islamic Law which has regulated in "*Fikh Munakahat*".

Because as the whole understanding of marriage purpose is to get descent. This Marriage purpose was intended by the text in Al-Quran and As-Sunnah ( Al- Hadith ). Marriage is performed by men and women with a *mahr* for women. One of the purposes of the Islamic law itself concerning to marriage process is the embodiment in achieving the welfare of the people, either individually or in the community, good for life in this world and in the Hereafter. In the case of transgender, there are 2 things that I emphasized as an approach to analyzing the case of Transgender including the developments in response to the concept of marriage according to Transgender Yogyakarta view, namely:

### 1. Text Approach ( text understanding)

The understanding of text about transgender cases in the *Al-quran* and *As-Sunnah* until whenever it is not going to be changed. The interpretation of Text will fully understand as what it refers to dispute, including its relation with the strict prohibition of the existence of transgender in the world. Transgender always seen as a figure who unlawful thing and even it is lawful for a Muslim to killed them. Islam is one of religion that is so extreme in its text in denouncing the concept, even the prohibition case or condemn to the figure of transgender. In life reality , below is an example that some of the foundation texts in the Qur'an where Islam strictly prohibits the existence of transgender, namely :

وَلَوْ طَآءَ إِذْ قَالَ لِقَوْمِهِ أَتَأْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا مِنْ  
أَحَدٍ مِّنَ الْعَالَمِينَ.<sup>21</sup>

تَكُمُ لَتَأْتُونَ الرِّجَالَ شَهْوَةً مِّنْ دُونِ النِّسَاءِ بَلْ أَنْتُمْ قَوْمٌ  
مُّسْرِفُونَ.<sup>22</sup>

Basically, Alloh SWT (The Almighty) has ever seized the luth people because they were like in doing sexual discourse as same men, now it is called by any tendency as Transgender figure. The example text taken from holy book is one the real fact that Islam extremely forbids the existence of Transgender. Actually there has still many texts which order to stop the existence of Transgender whether in was regulated in Al-quran or even As-sunnah.

So, based on text whether *Al-quran* or *As-sunnah* ( *Al-hadith*) as my own analysis related to this discourse of Transgender marriage concept could not give more tolerance because they are absolutely forbidden by Islam. In more clear statement that the Marriage concept done by Transgender Yogyakarta can't be tolerated in any form, since they have regarded as the form of violation the Islamic Syariah. This because Islamic thought considered the logic consequences of the sins until the allowed order that they may be lawful to be killed. This understanding of Text that they lawful to be killed because they are doing the same sex discourse as done by Transgender Yogyakarta in their life existence. Ultimately, the marriage concept according to Transgender Yogyakarta was absolutely wrong which it tends to be far away from the main principles of Marriage itself. So, based on this text approach the Transgender is *absolutely banned or forbidden by Islamic Law* without any proper consideration to Transgender itself.

### 2. The Psychological and sociological Approach;

Transgender according to psychological point of view is regarded as one of the gender identical disorders. It is a disorder of the sense of disillusionment with the kind of its genital thus more likely to act as the opposite sex. In other words, psychological experts consider that

<sup>21</sup> Q.S. Al-A'raf ( 8 ): 80.

<sup>22</sup> Q.S. Al-Araf ( 8 ): 81.

actually transgender seen kinds of sexual inequalities that impact the surrounding environment. In a sociological approaches anyone becomes transgender because they are trapped into wrong mingle in society that formed personality psychologically they are away from its physical condition. Through the approach of psychological and sociology that available here in order to provide clarity that I pour into my analysis which refers to the reasons why a person can become a real transgender are: biological factor, wrong educating factor, learning process and the environmental factors. Thus, considering the obvious reasons above, my analysis about developments transgender in Yogyakarta based on sociological viewpoint that properly the transgender case not viewed as a text ( Doctrinal), but it is concerned with the equal rights and obligations as social beings who also get legal protection from the government in the social structure, in order to get their existence in life in this state. Sociologically, transgender must exist in social order to get social human dignity.

If we goes further, psychologically the transgender case can't be disproved by nash ( *Text understanding*) as long as the factor which relate to anyone who becomes transgender caused by The Biological Factor. This factor has happened since someone was in the womb of mother even that she/he was born at all. The transgender which formed by non-Biological factor logically speaking that they can be considered as they are violate the rule of Islamic Law, in other words they are accusatory nature as a gift from God as The Almighty one. According to my own analysis in this case, a decent tolerance for transgender groups only to those who are become transgender due to Biological factor/ default factor where it considered as the given from God, Allah SWT ( *The Almighty one* ). As in the context of social life, transgender completely seen as a whole society that their existence should be respected and we also honor their particular things in order to keep their existence as humanity. We must

uphold the transgender existence that they also regard as a perfect creation from God without give any discrimination form to them. Transgender as whole shape must also be seen as perfect divine beings and having the same rights and obligations as Indonesian citizens.

## H. Conclusion

From the explanation above can be concluded that a few part of the Yogyakarta Transgender there were who did marriage with their couple as same as transgender. Lastly they lived together with their transgender partner, although in this case their existence is not recognized by the law or even religion. The Professions of Transgender Yogyakarta are very small in scope such are: *Ngamen, Nyepong, salon and sewing*. Those jobs done by the transgender Yogyakarta since they didn't get formal employment or non-formal sector.

Some factors that cause a person to become as Transgender are: (1) Biological factor; (2) The Environmental Factors/ Environmental Effects; (3) The Wrong Way of Educating; and (4) The Learning Process

So, when talking about the concept of marriage according to Mami Vinolia Wakidjo as transgender activist in LSM Kebaya representing the transgender in Yogyakarta explained that they did not see transgender marriage was never there, because in Indonesia is not ever known the concept of marriage as same types or kind (same man). So, in the case of transgender marriage is not regarded as being important, but the important thing is how transgender can survive with all the limitations that they have until this time.

Psychologically, the case of transgender can't be disproved by nash ( *Text Understasnding*) as a legitimation reason. It becasue of why we may understood the transgender phenomenon as a social problem. In any case, as long as the factor which related to anyone who becomes transgender caused by The Biological Factor. This Biological factor can't be blamed at all, it becasue

of this factor has happened since someone was in the womb of mother even that she or he was born at all. The transgender which formed by non- Biological factor logically speaking that they can be considered as they are violate the rule of Islamic Law, in other words they are accusatory nature as a gift from God as the Almighty one.

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